

Part 3 -- Remarks

This Amendment and Response is responsive to the office action mailed May 20, 2004. In that office action, a correction to the specification was requested; claims 2, 3 and 28 were objected to because of language informalities; claims 1, 13 and 16 were rejected as obvious under 35 U.S.C. 103(a) from Aldrich et al. (US 5,489,269 A); claims 2-12 and 17-33 were allowed; and claims 14 and 15 were noted as allowable if rewritten in independent form.

Reconsideration of these objections and rejections is respectfully requested. Claims 1-33 are pending.

Specification Correction

The specification has been amended as requested to reincorporate the serial number and filing date of the previous application which is now a U.S. patent, and to correct a typographical error.

Claim Objections

Claim 2 was objected to because of an alleged insufficient antecedent basis for "the drainage body" in line 11. An antecedent basis for this limitation is found in line 1 of the claim, which states: "A method for inserting a drainage body into the bladder."

Claim 3 was objected to because of an insufficient antecedent basis for "the tube-shaped body" in line 7. Claim 3 recites a "body" in line 4. Line 7 of claim 3 has been amended to conform to the antecedent "body" by deleting "tube-shaped" from in front of "body."

Claim 28 was objected to because of an insufficient antecedent basis for "the cavity" in line 3. The antecedent basis for "the cavity" can be found in independent claim 17, in line 5, from which claim 28 depends.

The other claims have been amended to correct other antecedent basis issues and to improve their form.

Allowable Subject Matter

Claim 14 has been rewritten into independent form by including subject matter from independent claim 13. Claim 15 depends from claim 14. Accordingly, both claims 14 and 15 should be allowable, in accordance with the examiner's notation of allowable subject matter.

Obviousness Rejections

Reconsideration of the obviousness rejection of claims 1, 13 and 16 based on the Aldrich reference, is respectfully requested.

Claim 1 has been amended to depend from amended claim 3. Since claim 3 was allowed, amended claim 1 should now also be allowable in conjunction with amended claim 3.

Claim 13 requires, in the manner set forth, an introducing apparatus for the insertion of an elongated urine drainage apparatus through a urinary canal into a bladder, and a flexible guide that has a length sufficient to extend from an exterior opening of the urinary canal through the urinary canal to the bladder.

As the May 20 office action acknowledges, Aldrich does not disclose an urine drainage apparatus which is used in and inserted through an urinary canal into a bladder. Aldrich discloses a hard tipped drainage catheter with that is inserted percutaneously (through the skin and the abdominal wall) into the bladder through a wall of the bladder not at the urethra. Column 3, line 66-column 4, line 2. To facilitate the percutaneous introduction of the drainage catheter through the abdominal and bladder walls, the Aldrich device utilizes an penetrating introducer stylet or trocar. Column 4, lines 46-50. The Aldrich device also has a tapered tip that is harder than that of the remainder of the catheter material so that the tip of the catheter is not pushed, peeled, or rolled back during introduction through the abdominal wall of the patient. Column 2, lines 10-25.

The Aldrich device is intended to address problems related to the insertion of drainage catheters through an abdomen wall. Column 1, lines 22-32. The entire focus

of Aldrich is on achieving an improved percutaneous penetration through the abdominal and bladder walls. Accordingly, Aldrich has nothing to do with the insertion of a drainage catheter through a urethra into the bladder. The entire focus of Aldrich is on percutaneous penetration through the abdominal and bladder walls. Nothing in Aldrich appears to suggest or imply inserting a drainage catheter through a urethra into the bladder with a separate introducing member as required in claim 13. Furthermore, Aldrich does not and cannot imply the insertion of a drainage device through the urethra to the bladder because Aldrich expressly focuses on the percutaneous penetration of the abdominal and bladder walls by use of a trocar. Column 4, lines 51-55. Since the method of insertion into the bladder is expressly disclosed and constitutes the focus of the Aldrich patent, other ways of inserting the Aldrich device are not and cannot be realistically implied from the Aldrich patent itself.

The May 20 obviousness rejection cites legal authority to the effect that “[in] considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” The obviousness argument asserts “Because the only naturally occurring route to a bladder from outside of the patient is via the urethra, the disclosure (of Aldrich) as a whole implies that in order to insert the device into a bladder, it must first be routed through the urethra.” Page 4, May 20 office action.

As noted, Aldrich specifically addresses the fact that his device does not insert through their urethra into the bladder. Therefore, there is no basis upon which to support the argument of an implied insertion of the device through the urethra into the bladder. The alleged implication is simply destroyed by the teaching of Aldrich itself. Lacking any basis for the implication that the Aldrich device is inserted through the urethra, which implication is the critical basis for the obviousness rejection, the obviousness rejection based on Aldrich must fail, logically, legally and technologically.

Accordingly, it is believed that claim 13 is allowable, and such action is respectfully requested.


Claim 16 depends on claim 13 and should be allowable in conjunction with claim 13. In addition claim 16 requires, in the manner set forth, that the flexible guide comprises a grip at one end to facilitate the insertion of the drainage apparatus through the urinary canal. Aldrich does not appear to disclose or suggest a flexible guide with a grip at one end to facilitate the insertion of the drainage apparatus through the urinary canal. Since Aldrich fails to disclose or suggest a flexible guide, Aldrich is insufficient to render claim 16 obvious.

Conclusion

As a result of the amendments and remarks set forth above, it is believed that all pending claims 1-33 are in condition for allowance. Allowance is respectfully requested. The Examiner is requested to contact the undersigned by telephone to discuss any issues which may inhibit the immediate allowance of the claims.

Respectfully submitted,

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